IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.111 of 2005.

Judgment reserved on 14.9.2007

Date of decision: 21.9.2007.

Bimla Devi and others ….Petitioners.

-Versus-

Govind Ram and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.G.C.Gupta, Senior Advocate with Mr.Mohinder Gautam, Advocate.

For Respondents: Mr.Bimal Gupta, counsel for respondents 1 to 5.
Mr.Bhupinder S.Kanwar, counsel for respondents 6,7 & for LRs of R-8.
Mr.M.A.Khan, Dy.A.G. for R-9.

Deepak Gupta, J.

This Revision Petition is directed against the order of the learned District Judge, Shimla in Civil Misc.Appeal No.78-S/14 of 2003/2005 whereby he has dismissed the appeal filed by the petitioners challenging the order dated 22.9.2003 passed by learned Sub Judge (5), Shimla whereby the appellants were restrained, during the pendency of the suit, from obstructing the plaintiffs from grazing cattle and cutting grass from the suit land.

Brief facts of the case are that the plaintiffs filed a suit claiming that they have right to use the suit land which is a 'shamlat deh' comprised in khasra Nos.210/1 and 208/126 measuring 227.5

bighas situated in Mauza Matholi, Pargana Khushala, Tehsil and District Shimla as pasture for grazing and are also entitled to cut grass from the aforesaid land and the defendants be restrained from interfering the rights of the plaintiffs.

Admitted facts are that the suit land is ‘shamlat deh’ land which earlier vested in the Panchayat. There is no manner of doubt that such a land is to be utilized by the entire village proprietary body. This land was initially vested in the Panchayat and thereafter in the State. However, by amendment now made the land reverts back to the village proprietary body.

It is also not disputed that the petitioners own some land in the village. It is contended on behalf of the petitioners that the plaintiffs/respondents are new settlers in the village and own only a small portion of land. On this ground it is contended that they have no right to use the village common land. Both the Courts below have come to the conclusion that the petitioners have a right to use the said land for grazing of their cattle and have a right to cut grass.

I have heard Sh.G.C.Gupta, learned Senior Counsel for the petitioners. The main challenge of Sh.G.C.Gupta is that since the plaintiffs themselves have admitted that at best they are joint owners of the land in question no decree of restraint could have been passed against the petitioners. It is also contended that the petitioners cannot have a right to graze their cattle over the entire 225.5 bighas of land and must specify the portion over which they want to exercise their right. It is on these grounds that the order of the learned Courts below are challenged.

From the material on record it is prima facie clear that all the parties to the litigation as well as the other villagers have a right to use the village common land for their common use. These will include the right of grazing cattle and cutting grass. In a joint holding every joint owner will have a right over every inch of land. Therefore, each party has a right over the entire land and no other co-owner has a right to restrain other co-owner from using any portion of the land unless it is shown that the said land has been partitioned.

Keeping in view the aforesaid facts, I find no merit in the Revision petition and the same is according rejected. The suit in question was filed in the year 2003. A perusal of the record of the trial Court shows that the evidence of the plaintiffs has already been recorded. Therefore, the learned trial Court is directed to dispose of the suit as early as possible as and in any event not later than 30th June, 2008. The parties through their counsel are directed to appear before the learned trial Court on 23rd October, 2007.

September 21, 2007 **(Deepak Gupta),**
PV **Judge**